

The claimant appeals from a denial of his application for medical and temporary total disability compensation benefits. The respondent and its insurance company admit that claimant suffered accidental injury arising out of and in the course of his employment with respondent on July 14, 1992. However, respondent contends that the injury and

complaints for which claimant is now seeking treatment and temporary total disability benefits are the result of a new injury, suffered while in the course of his employment with another employer, which aggravated claimant's pre-existing condition. The issue now before the Appeals Board is whether the subsequent aggravation was the result of an intervening act or whether it is a natural and probable consequence of the original injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After having reviewed the entire record, and for purposes of this preliminary hearing only, the Appeals Board finds that the Order of Administrative Law Judge George R. Robertson, dated March 3, 1994, denying benefits to claimant should be reversed.

Claimant was injured July 14, 1992, in Harvey County, Kansas, while working for respondent. He was treated for that injury by Dr. Charles C. Craig who performed surgery on claimant's right knee. That procedure included a bone graft with a donor site of the left hip. On March 2, 1993, claimant was rated and released to return to work as a truck driver with a permanent restriction against lifting. Dr. Craig continued to treat him even though he had been released to return to work and been given a permanent impairment rating.

Claimant testified that he has never had a period where he has been completely symptom-free since his knee surgery. Prior to the incident which precipitated claimant to return to Dr. Craig on October 11, 1993, he had last seen Dr. Craig on June 28, 1993, and was scheduled for a re-check in six months. In late September 1993, claimant was working for Kelly Truck Line as a driver. His job also required him to pull tarps to cover loads on the flatbed trailers. This activity together with his climbing on and jumping from the flatbed trailers aggravated his knee condition. He quit that job approximately September 24, 1993, due to increased symptomatology in his knee and returned to see Dr. Craig on October 11, 1993.

Dr. Craig took him off work for the period of September 24, 1993 through October 25, 1993. Claimant actually resumed working on October 20, 1993, driving for another company. He is asking for payment of medical bills, medical mileage and temporary total disability compensation for the period of September 24, 1993 through October 20, 1993.

The deposition of Charles C. Craig, M.D., was taken on behalf of respondent. Dr. Craig is a board-certified orthopedic surgeon in Newton, Kansas. He initially saw claimant for an interarticular tibial plateau fracture involving primarily the lateral part of the knee. This injury disrupts the cartilage of the knee such that it de-places downward. Surgery included the harvesting of bone from the hip which was then packed into the depression. Dr. Craig pointed out that once cartilage is damaged it does not heal. That is why a high percentage of these cases deteriorate with time and a significant number end up needing knee replacements. Although he had discussed with claimant the potential for future knee replacement surgery when he was rated and released in March 1993, and again during the office visit on June 28, 1993, there was no way he could predict how rapidly the deterioration would occur or when that surgery might be necessary. Things like weight-bearing activities would tend to irritate the knee. These include running, jumping or walking.

When claimant was seen on October 11, 1993, he reported problems resulting from his work activities, particularly when jumping off the truck and when pulling tarps. He also reported problems using the left leg to clutch. Dr. Craig agreed that those types of

activities could cause claimant to be more likely to have irritation to the cartilage and pain because of the prior damage. Those activities can result in increased symptoms because the damaged cartilage does not absorb shock as well as it would have normally and more shock sensation will be transmitted to the underlying bone where the pain fibers are located.

Dr. Craig nevertheless related claimant's current complaints to the original July 14, 1992 injury. He is of the opinion that the accident was going to be a life-long problem for the claimant that can be aggravated by episodes such as what occurred in September 1993, but which, in and of themselves, do not change the whole picture. It is a continuous process related to one injury. Therefore, while activities such as claimant described at his office on October 11, 1993, can definitely aggravate his symptoms, there was no increase in permanent functional impairment nor change in his restrictions. In addition, even though Dr. Craig did not see claimant on September 24, 1993, he would have recommended that claimant be off work from that date until his return to work on October 20, 1993, although he actually suggested claimant stay off work until October 25, 1993.

Dr. Craig was the only medical expert to testify. In his opinion, claimant is going to experience the type of exacerbations he described in September 1993 as a part of his daily life experience. With the injury he has, the type of flare-ups he experienced in September 1993 is a factor of activity and just daily life experience. Claimant, himself, testified that he has never been symptom-free since his July 14, 1992 accident and that he has had other instances of increased symptomatology in his knee other than the incident in September. It is the opinion of the Appeals Board that the September 1993 aggravation was a natural and probable consequence of the original injury and is compensable.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge George R. Robertson, dated March 3, 1994, is hereby reversed. All reasonable and necessary medical treatment under the direction of Dr. Charles C. Craig is approved and ordered paid, together with temporary total disability compensation for the period of September 24, 1993 through October 20, 1993.

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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